IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NOS.121 OF 1999, 172 OF 2000, 5, 6, AND 50/2002

FIRST APPEAL NO. 121 OF 1999

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P. O. Navelim,
Salcete, Goa, 403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao,
Goa. ... Appellants.

Versus

Pandurang Yesso Dessai,
son of late Yesso Dessai,
major in age, teacher,
r/o Pansulem- Canacona,
Goa. ... Respondent.

Mr. E. Afonso, advocate for the appellants.

Mr. P. A. Kanat, advocate for the respondent.

FIRST APPEAL NO. 172 OF 2000

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P. O. Navelim,
Salcete, Goa, 403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao

Railway Station, Margao,
Goa. ... Appellants.

Versus

1. Ganaba Y. Dessai, H.No.1224,
Pansulem, Canacona, Goa,
2. Premanand Y. Desssi,
H. No.1224, Pansulem,
Canacona- Goa, deceased,
represented by hisL.Rs.:-

2(a) Mrs. Chaya P. Dessai (wife),

2(b) Miss Nina P. Dessai
(daughter),

2(c) Miss Sapna P. Dessasi
(daughter), all r/o
H. No. 1224, Pansulem,
Canacona- Goa. ... Respondents.

Mr. E. Afonso, advocate for the appellants.

Mr. P. A. Kamat, advocate for the respondents.

FIRST APPEAL NO. 5 OF 2002

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P. O. Navelim,
Salcete, Goa, 403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao,
Goa. ... Appellants.

Versus

1. Babuso L. Bhagat (deceased) by
his legal representatives.

1a. Smt. Surekha alias Shenvtu
Babusso Bhagat,
r/o. Bagatwada, Nagaecem,
Canacona, Goa.

2b. Smt. Vanita Umakant Dessai,
r/o. Quital, Fatorpa, Quepem, Goa.

3c. Shri Umakasnt Uttam Dessai,
r/o. Quitala, Fatorpa, Quepem, Goa.

4d. Shri Shasikant Babuso Bhagat,
r/o.Bhagatwada, Nagaecem

5e. Smt. Jyoti Shashikant Bhagat,
r/o. Bhagatwada, Nagaecem,
Canacona, Goa.

6f. Miss Sheela Babuso Bhagat,
R/o. Bhagatwada,Nagaecem,
Canacona, Goa.

7g. Smt. Anita Premanand Phaldesai,
Zoglemorod, Quepem, Goa.

8h. Shri Premanand K. Phaldesai,
Zoglemorod, Quepem, Goa.

9i. Smt. Kavita Saroj Dessai,
Bhiunsa, Cuncolim, Goa.

10j. Shri Saroj Bhiku Dessai,
Bhiunsa, Cuncolim, Goa. ..... Respondents.

Mr. E. Afonso, Advocate for the appellants.

Respondents served - absent.

FIRST APPEAL NO. 6 OF 2002

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P. O. Navelim,
Salcete, Goa, 403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao,
Goa. ..... Appellants.

V/s.

1. Jiu Vithoba Gaunkar (deceased)

I. Mrs. Mayawati, J. Gaonkar,

II. Mr. Deepak J. Gaokar,

III. Mr. Vithoba J. Gaonkar,

IV. Miss Sharmila J. Gaonkar,

All residing at Chaudi, Canacona, Goa. ..... Respondents

Mr. E. Afonso, Advocate for the appellants.

Respondents served - absent

FIRST APPEAL NO. 50 OF 2002

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P. O. Navelim,
Salcete, Goa, 403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao,
Goa. ..... Appellants.

V/s.

1. Nicolau Fernandes,
Ponsulem, Canacona, Goa.

2. Sebastiao Fernandes,
Ponsulem, Canacona, Goa. ..... Respondents.

Mr. E. Afonso, advocate for the appellants.

Respondents though served, absent.

CORAM : A. P. LAVANDE, J.

DATE : 1ST APRIL, 2005

ORAL JUDGMENT

All these appeals can be disposed of by common Judgment since the lands involved in these appeals are acquired by the same notification and the facts are almost identical. The learned Counsel appearing for the parties have also submitted that all these appeals be disposed of by common Judgment since the facts involved in all these appeals are almost identical. By notification dated 12.8.1991, the Government acquired large chunks of land at Canacona Taluka for the Konkan Railway Corporation Ltd. The lands belonging to the respondents situated at Nagarcem-Palolem were part of the acquired land. The details showing the area acquired, survey numbers, land acquisition case numbers, corresponding appeal numbers and the dates of Judgments/Awards passed in each case are as follows :

F.A. No.	L.A.C. No.	Date of Judgment	Survey Nos.	Area
121/1999	132/1995	08/07/99	84/5	415 sq.mtrs.
172/2000	90/95	29/4/2000	85/1, 85/2, 86/6, 86/7, 84/2, 84/3, 84/4, 87/3, 90/8 & 90/7.	1170 sq. metre.
50/2002	114/1995	31/3/2001	87/1 (part)	1885 sq. metres.
5/2002	93/1995	31/8/2001	105/15, 105/6, 106/5, 95/9.	1787 sq. metres.
6/2001	115/195	30/8/2001	101/17, 88/1, 88/6, 88/12, 134/15.	5307 sq. metres.

2. In respect of the lands involved in the above appeals, the Special Land Acquisition Officer, by Award dated 22.12.1993 fixed the compensation at the rate of Rs.9/- per sq. metre. The respondents in these appeals sought reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act') claiming compensation at the rates ranging from Rs.100/- to 200/- per sq. metre. In the reference Court, the respondents examined one witness each in respective cases and primarily relied upon Award dated 15.3.1989. The said Award was in respect of land acquired for an approach road to Talpona Galgibag bridge in Canacona Taluka. The said Award was in respect of an area of 1,34,400 sq. metres acquired by Notification dated 30.4.1986

issued under Section 4 (1) of the Act.

3. The Reference Court, while passing the Awards which are impugned in these appeals, relied upon said Award passed in the year 1989 and after holding that the acquired lands are comparable and similar to the lands acquired which were subject-matter of the Award dated 15th March, 1989, fixed the compensation at the rate of Rs.24/- per sq. metre, after giving increase of 10 % per year from 1986.

4. Mr Afonso, learned Counsel appearing for the appellants submitted that the land involved in all these appeals being agricultural lands, had no building potential and, therefore, the reference Court ought to have rejected the reference. According to the learned Counsel, the acquired lands, in all these appeals, were paddy fields. Relying upon the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, Mr. Afonso submitted that the lands could not have been used for any purpose other than the agricultural purpose. According to the learned Counsel, the respondents in these appeals had not led any evidence to establish that they were entitled to higher compensation than the one fixed

by the Special Land Acquisition Officer. Mr. Afonso further submitted that granting 10% increase every year taking the Award dated 15th March, 1989 as basis is unwarranted since in places like Canacona there could not have been 10% rise in the value of the property every year and secondly, the acquired lands were agricultural lands (paddy fields) and, as such, the value of the said lands could not have increased every year by 10 %. The learned Counsel further submitted that the respondents had not led any evidence about the development around the acquired lands from the year 1986 to 1991 to warrant increase of 10 % every year.

5. Per contra, Mr. Kamat, learned Counsel appearing for the respondents in First Appeal Nos. 121/1999 and 172/1999 submitted that the reference Court was absolutely justified in placing reliance on the Award dated 15.3.1989, passed by the Special Land Acquisition Officer. In support of their submission, the learned Counsel placed reliance on the Judgments of the Apex Court in ***The State of Madras vs. A.M. Nanjan & Anr.*** (AIR 1976 SC 651) and ***Karan Singh & Ors. vs. Union of India*** (AIR 1997 SC 3889). Relying upon the Judgment of the Apex Court in ***Municipal Committee, Bhatinda and ors. vs. Balwant Singh***

and ors, ((1995) 5 SCC 433), the learned Counsel submitted that the agricultural lands situated within the Municipal limits have potential value and, therefore, increase of 10% every year awarded by the Reference Court is justified. The learned Counsel also placed reliance on the Judgment of the Apex Court in the case of ***V.M. Salgoacar & Brother Ltd. vs. Union of India,*** ((1995) 2 SCC 302) and submitted that the reference Court was absolutely justified in granting increase of 10 % every year.

6. I have considered the submissions made by the learned Counsel for the parties. I have gone through the Judgments relied upon by the learned Counsel appearing for the respondents. I have gone through the records in each of the appeals.

7. The only point for determination which arises in all these appeals is whether the reference Court was justified in fixing the compensation in respect of the acquired lands at the rate of Rs.24/- per sq. metre and if not, what is the compensation payable in respect of the acquired land.

8. In so far as the submission of Mr. Afonso that the

acquired land had no building potential and therefore, the reference Court could not have enhanced the compensation is concerned, I am unable to accept the submission for the simple reason that the reference Court has relied upon an earlier Award passed in the year 1989 in respect of lands which are similar to the lands involved in the present appeals and situated in the proximity of the acquired lands. That being the position, in my opinion, the reference Court was fully justified in placing reliance upon the Award dated 15.3.1989 passed by the Special Land Acquisition Officer. It has to be noted that the reference Court has not fixed the compensation in respect of the acquired land on the basis of the building potential, but the compensation has been fixed on the basis of an earlier Award passed in respect of the lands which are similar to the lands involved in the present acquisition and situated in the close proximity of the acquired land. The Apex Court has held that the compensation offered by the Land Acquisition Officer can be the basis for fixing the compensation when similar land is acquired at a later stage. The learned Counsel are, therefore, are justified in placing reliance on the Judgments of the Apex Court in the cases of ***The State of Madras vs. A.M. Nanjan & Anr.*** (supra) and ***Karan Singh & Ors. vs. Union of***

India (supra) in support of the submission that the awards given by the Land Acquisition Officer can be relied upon as a good piece of evidence for determining the market rate of the land acquired under certain circumstances. I am, therefore, of the view that the approach of the Reference Court in relying upon the Award dated 15.3.1989 cannot be faulted. It is not seriously disputed that the lands involved in the appeals are in the close proximity of the lands acquired by the Award dated 15.3.1989 and are similar in nature being paddy fields. That being the position, I do not find any infirmity in the finding given by the Reference Court that the compensation in respect of all these lands could be fixed at the rate of Rs.15/- per sq. metre in the year 1986.

9. The next question which arises for consideration is whether the reference Court was justified in granting increase of 10 % every year. The reference Court has granted increase of 10 % on compounding basis, relying upon the Judgment of the Apex Court in the case of ***V.M. Salgoacar & Brother Ltd. vs. Union of India (supra)*** and fixed the compensation payable in respect of the acquired lands at the rate of Rs.24/- per sq. metre. Ordinarily, as held by the Apex Court, increase of 10% every year has to be

granted, but the question is whether the same principle should apply in cases where agricultural lands (paddy fields) are acquired and that too at a place situated in Taluka Canacona, which lies on the southern boundary of Goa. I find considerable force in the submission of Mr. Afonso that having regard to the nature and location of the lands acquired in the present cases, the reference Court ought not to have granted 10% increase every year. Although the lands acquired are agricultural lands and situated in Municipal area of Canacona, the fact remains that there are certain restrictions on the use of such lands for any other purpose and secondly, the development in Canacona Taluka has not been as fast as in other major cities of Goa like Margao, Panaji, etc. Moreover, the respondents herein have not led any evidence to establish that there had been any development around the acquired lands from the years 1986 onwards. In my view, therefore, the increase in value of land having building potential cannot be equated with the increase in value of paddy fields which have several restrictions in so far as their use is concerned. Nonetheless, the fact remains that judicial notice can be taken of the fact that land prices are increasing every year and even the prices of agricultural lands increase every year. Considering the

fact that the lands are paddy field and are situated in Canacona Taluka, in my view, increase of 5% and not 10% every year would be justified. I am unable to accept the submission of learned Counsel appearing for the respondents that increase of 10 % every year granted by the reference Court is justified. Accordingly, I hold that the respondents are entitled to increase of 5% every year from 1986. Therefore, the compensation in respect of the acquired lands comes to Rs.18.75 per sq. metre. I deem it appropriate to round it up to Rs.19/- per sq. metre. Needless to mention that the respondents would be entitled to all the statutory benefits under the Act.

10. In view of the above discussion, the appeals are partly allowed. The impugned Awards mention in paragraph (1) above are modified, fixing the compensation at the rate of Rs.19/- per sq. metre. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

ssm.